

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

RICHARD J. KLEIN,

Petitioner,

Case No. C-1-01-794

v.

Judge Beckwith

HAROLD CARTER,

Magistrate Judge Sherman

Respondent.

**MEMORANDUM OPPOSING PETITIONER'S MOTION FOR SANCTIONS
AND DEFAULT JUDGMENT**

Petitioner ("Klein") has moved for sanctions and for default judgment alleging that Respondent has failed to respond to his revised amended petition. His motion should be denied.

On May 9, 2002, Respondent filed a motion to dismiss based on Klein's failure to exhaust all of his claims. Specifically, the claims raised in Klein's direct appeal are not exhausted because he did not pursue an appeal to the Ohio Supreme Court and can still file a motion for a delayed appeal. On February 11, 2003, The Magistrate issued a Report and Recommendation recommending that the motion be denied because Petitioner presented his claims in other actions.

On February 20, 2003, Respondent filed Objections. In the objections, Respondent pointed out that three of Klein's claims for relief were presented in his direct appeal but were not presented in any other

proceeding and were not presented to the State's highest court due to Klein's failure to file an appeal to the Ohio Supreme Court. Specifically, his fifth claim for relief, in which he claimed that the state failed to disclose exculpatory evidence, his tenth ground for relief, in which he claimed that there was insufficient evidence to support his conviction, and his thirteenth ground for relief, in which he claimed that his sentencing for multiple convictions violated his double jeopardy protections, were raised only in his direct appeal and were not exhausted due to his failure to appeal to the Ohio Supreme Court. Respondent's objections are still pending.

Klein subsequently filed a revised amended petition. However, his revised amended petition contains those same three unexhausted claims. (See Revised Amended Petition, pp. 45, 71, 104)

Klein's motions for sanctions and for default judgment should be denied as Respondent is awaiting this Court's ruling on the objections before proceeding further.

Respectfully submitted,

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Ohio Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed by regular, first-class mail to Richard Klein, #350-022, Ross Correctional Institution, P. O. Box 7010, Chillicothe, Ohio 45601, on the 29th day of December, 2003.

S/Diane Mallory